IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10467 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HANSARAM NENAJI KHUMAVAT

Versus

STATE OF GUJARAT THRO' SECRETARY

Appearance:

1. Special Civil Application No. 10467 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/01/2003

ORAL JUDGEMENT

#. The District Magistrate, Surat, by his order dated 26.9.2002, detained the petitioner in exercise of the powers conferred upon him under Section 3(2) of the

Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980. The order of detention is placed at page 16 in the compilation.

#. Along with the detention order, the petitioner is served with the grounds of detention. As per the said grounds, the petitioner is doing the business in the name and style of "Sagar Oil Center" along with his partner Bhagubhai Haribhai Chauhan. It is alleged against the petitioner that the petitioner is doing the business of petroleum solvent illegally as well as the business of oil and he is keeping such petroleum products illegally in his godown, which is situated at Gokulnagar, Taluka Kamrej. It is further alleged that the petitioner is not having any licence for keeping such quantity of petroleum solvent or the oil at his godown.

#. On behalf of the Civil Supplies Department, inspection was carried out at the premises of the petitioner on 20.5.2002. At that time, the partner of the petitioner one Bhagubhai Chauhan was present. During the course of inspection, it was found that the petitioner is not even maintaining the stock register nor kept any details. The partner of the petitioner also fairly admitted that the petitioner and his partner both are doing the business of petroleum solvent illegally and they are selling the said products to the owners of Rikshaws and Scooters, and, thereby they are cheating innocent persons. Certain quantity of petroleum solvent was seized from the godown of the petitioner as mentioned in the detention order. It is also mentioned in the detention order that the petitioner has also accepted the statement made by his partner. Other irregularities are also mentioned in the detention order. Ultimately, in order to prevent the petitioner from doing such illegal activities, the said order is passed against the petitioner by way of preventive detention.

#. At the time of hearing of this petition, Mr.Prajapati, learned advocate, for the petitioner-detenu, argued that even though the incident in question has taken place on 20.5.2002, i.e. the date on which the inspection was made, and, even though, the petitioner and his partner have admitted that they have committed such illegalities and irregularities, yet the detention order is passed as late as on 26.9.2002. It is submitted that, there is a delay of about four months in passing the detention order from the date of occurrence of the incident in question. In view of the aforesaid delay, it is submitted that, if the authority was really vigilant and wanted to prevent the petitioner from

carrying on illegal activities, the petitioner was required to be detained immediately or at least within a short period, as, the entire material was ready and available with the authority within short time from the date of incident, i.e. 20.5.2002. He further submitted that, it was not necessary for the authority to wait till the report of FSL is available, as, according to him, in view of his own admission, it was not necessary to wait till the FSL report is available. In my view, delay in passing the detention order in such type of cases would frustrate the entire object of detaining a person by way of preventive detention.

#. Mr.M.K.Patel, learned AGP, submitted that, the report of FSL was made available on 4.9.2002 and, thereafter, the detention order was passed after about 22 days. However, in my view, it is not the case in which the department should have waited till the report of FSL, especially, when the petitioner has admitted his guilty immediately on 29.5.2002. This Court (Coram: A.L.Dave,J) in Special Civil Application No.78 of 2000 has observed in para 6.1 as under.:

"So far as delay in passing of the order is concerned, there is no dispute about the fact that inspection was carried out on 11th August, 1999 and the order was passed on 13th December, 1999. Time gap between these two days is not explained by the detaining authority in the affidavit in reply. In paragraph 11 of this affidavit in reply, the detaining authority states as under:-

"I say that it is true that inspection of shop was carried on 11-8-1999 and order of detention is passed on 13-12-1999, but at the same time, live-link is not snapped and it cannot be said that stale incidents are considered for the purpose of passing of the order of detention."

Barring this, there is no other explanation coming from the detaining authority. If the grounds of detention are seen, the detaining authority has observed that the powers under Section 3(2) of the PBM Act are exercised in order to "immediately prevent the petitioner from continuing his black marketing activities". This subjective satisfaction would stand vitiated, if the detaining authority does not take immediate action. If the subjective satisfaction is genuine, action ought to have been taken by the

detaining authority and, for that purpose, as per the statement made at the Bar by Mr.Thakkr, the last statement, during the inquiry, was recorded on 16th September, 1999. Thereafter, there is no further Inquiry/Investigation and the order is passed on material collected before that date and, therefore, there is at least a delay of about three months in passing the order. This cannot justify the genuineness of satisfaction of the detaining authority about the immediate need for exercise of powers under PBM Act for immediately preventing the petitioner from pursuing his activities. Under these circumstances, the petition deserves to be allowed."

#. Considering the aforesaid aspect of the matter and considering the fact that the detaining authority has not acted promptly, even though, the petitioner has admitted his guilty, the petitioner is required to be released from detention in view of the long delay between the occurrence of the incident and passing the detention order. Even after the report of FSL is made available, the detention order was not passed immediately and the same was passed about 22 days thereafter. When a person is detained under the preventive detention, the object is to see that he may not carry on such illegal activities. No laxity is required to be shown in such cases in passing the prompt order of detention. Unfortunately, that has not been in the present case.

#. Mr.Patel, learned AGP, on instruction from the concerned officer, stated that the department will also file appropriate criminal case before the appropriate criminal court under Section 7 of the Essential Commodities Act, 1955, as, the offence in question is punishable with the imprisonment of 7 years. He further stated that, appropriate proceedings will be taken for arresting the detenu under the ordinary law. This statement, of course, have no bearing to decide the present petition, however, it is merely recorded at the instance of the learned AGP.

#. Mr.Prajapati, states that, his client will not carry on the business in the name and style of "Sagar Oil Center" and will not continue the business of petroleum solvent, in any manner, without getting licence from the authority. This statement is merely recorded, so that, the department can have vigil over the activities of the detenu.

#. For the reasons recorded above, this petition is allowed. The order of detention dated 26.9.2002 is quashed and set aside. The detenu Shri Hansaram Nenaji Khumawat is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)